1978

State of Utah v. Karl J. Stavar : Brief of Respondent

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, :

Plaintiff-Appellant, :

-v- : Case No. 15432

KARL J. STAVAR, :

Defendant-Respondent. :

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT OF THE
DISTRICT COURT OF CARBON COUNTY
HONORABLE EDWARD SHEYA, JUDGE

PHIL L. HANSEN
HANSEN AND HANSEN
250 East Broadway
Salt Lake City, Ut

Attorneys for Resp

ROBERT B. HANSEN
Attorney General

ROBERT R. WALLACE
Assistant Attorney General

236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, :

Plaintiff-Appellant, :

-v- : Case No. 15432

KARL J. STAVAR, :

Defendant-Respondent. :

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT OF THE
DISTRICT COURT OF CARBON COUNTY
HONORABLE EDWARD SHEYA, JUDGE

PHIL L. HANSEN
HANSEN AND HANSEN
250 East Broadway, Suite 100
Salt Lake City, Utah 84111

Attorneys for Respondent

ROBERT B. HANSEN
Attorney General

ROBERT R. WALLACE
Assistant Attorney General

236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Appellant

TABLE OF CONTENTS

CASES CITED

STATUTES CITED

LEGISLATIVE RECORD CITED

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Appellant,	:	
-v-	:	Case No. 15432
KARL J. STAVAR,	:	
Defendant-Respondent.	:	

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

DISPOSITION IN THE LOWER COURT

The presentation of these sections made by appellant are satisfactory.

RELIEF SOUGHT ON APPEAL

Respondent seeks to have the trial court decision affirmed.

STATEMENT OF FACTS

Except as noted below, the presentation of facts made by appellant is satisfactory.

Appellant states that the motion to dismiss was granted without prejudice by the trial court. The transcript of the proceedings does not state this. On page 11 of the transcript the judge merely stated that "I dismiss the accusation."

ARGUMENT

POINT I

THE STATE HAS NO STATUTORY BASIS FOR APPEAL SINCE UTAH CODE ANN. § 77-7-1 (1953), AS AMENDED, IS CRIMINAL IN SUBSTANCE, AND THE STATE CAN ONLY APPEAL FROM CRIMINAL ACTIONS WHEN ALLOWED TO BY UTAH CODE ANN. § 77-39-4 (1953).

The procedure followed when pursuing an action under Utah Code Ann. § 77-7-1 (1953), as amended, is set out in Utah Code Ann. § 77-7-2, et seq. The title of Title 77 is Code of Criminal Procedure. Although the exact characterization to be given to the term "malfeasance in office" is one of the issues of this brief, there is no doubt that the procedures used when bringing an action under Utah Code Ann. § 77-7-1 (1953), as amended (hereinafter 77-7-1), are those allowed for criminal actions, even when pursuing a charge of "malfeasance in office."

The grounds for appeal available to the state in a criminal proceeding are limited by Utah Code Ann. § 77-39-4 (1953) (hereinafter 77-39-4) which states:

> An appeal may be taken by the state:
>
> (1) From a judgment of dismissal in favor of the defendant upon a motion to quash the information or indictment.
>
> (2) From an order arresting judgment.
>
> (3) From an order made after judgment affecting the substantial rights of the state.

> (4) From an order of the court directing the jury to find for the defendant.

Therefore, the issues to be confronted are: (1) does an action brought for malfeasance in office fall within the limitations imposed by Utah Code Ann. § 77-39-4 (1953), and, if so, (2) in this particular case, is the state prohibited from appealing the lower court ruling.

Appeals from actions brought under 77-7-1, as amended, should be limited by 77-39-4 on the basis of a logical construction of the statutes, since both fall under the same title. To interpret 77-7-1 as falling outside of the limitation of 77-39-4 would result in allowing an action falling within criminal procedure guidelines not to be covered by its express limitations.

An action does not need to be "wholly criminal" in application to fall under 77-39-4. In Hartman v. Weggeland, 19 Utah 2d 229, 429 P.2d 978 (1967), an appeal by a county attorney and city judge from an order that certain depositions be made avialable to the defendant in a criminal case, the Utah Supreme Court stated:

> It might be argued that because the state is not a named party this matter is civil in nature, and hence the quoted section [77-39-1] does not apply. However, the veneer is civil. The substance is criminal. (Emphasis added.)

The court went on to hold that the 77-39-4 limitations

applied, and that appeal was barred.

Although no Utah "malfeasance" cases have directly ruled on this point, all of the cases have emphsized the need for protection of the defendant in this type of action and have demonstrated that an action brought for malfeasance in office is criminal in substance. In State v. Geurts, 11 Utah 2d 345, 359 P.2d 12 (1961), the court stated:

> . . . due to the serious consequences to a defendant so charged [with malfeasance in office], it is also important to maintain such protections for the accused as can be done consistent with the purpose of the statute.

In State v. Jones, 17 Utah 2d 190, 407 P.2d 571 (1965), the court reinforced the protection due a defendant in a malfeasance in office action:

> . . . the statute should be strictly construed against the authority invoking it and liberally in favor of the one against whom it is asserted. (Emphasis added.)

Later in the opinion, the court stated:

> . . . the privilege of choosing and electing public officials and repudiating them if and when they so desire, belongs exclusively to the people, and that neither the courts nor any other authority should be hasty to encroach upon that right.

It is clear that as a result of the express holding in Hartman extending 77-39-4 to matters that are criminal in

substance, and the tenor of Geurts and Jones concerning the protection due to one charged with malfeasance in office, the limitations of 77-39-4 should be applied to action brought under 77-7-1, a sister chapter in the same title. To rule otherwise would allow the State to proceed with all of the effect and force of a criminal proceeding without any of the statutory restraints.

Since 77-39-4 should be applied to actions brought under 77-7-1, the question becomes whether or not in this particular case 77-39-4 bars an appeal by the State. The State in this case proceeded against the defendant on the basis of an accusation, as provided for in 77-7-2. It must be noted that the term "accusation" was present in the 1953 version of 77-7-1, the same time 77-39-4 was enacted without mentioning an "accusation."

Section 77-39-4 expressly authorizes certain appeals by the State, thus disallowing any grounds for appeal not stated therein. The term "accusation" is not found in any part of 77-39-4. Therefore, appeal from a dismissal of an accusation is prohibited. It might be argued that the appeal is civil in nature; however, the Utah Rules of Civil Procedure do not have any provision relating to appeal from a dismissal of an accusation. By omitting the term "accusation" from any of the bases available for appeal, it must be presumed that the legislature did not intend to permit an appeal to be

taken by the State when the court quashes an accusation.

The Utah Supreme Court has interpreted 77-39-4 very strictly. In State v. Overson, 26 Utah 2d 313, 489 P.2d 110 (1971), the State appealed from an order granting defendant's motion to dismiss on the grounds of trial court error. The court held that this basis for appeal did not

> . . . fall within any [basis for appeal] of the highly restrictive statute, Sec. 77-39-4, U.C.A. 1953, specifying the instances in which the state may appeal. (Emphasis added.)

This same reasoning was used in dismissing an appeal in State v. Callahan, 26 Utah 2d 304, 488 P.2d 1048 (1971).

If an appeal by the State in a matter that is criminal in nature is not expressly allowed under 77-39-4, it is barred. Since actions brought under 77-7-1 should fall under the restrictions provided for in that chapter, appeal by the State from the dismissal of an accusation should fall within 77-39-4. In this case, the State has no statutory grounds for appeal.

POINT II

THE TRIAL COURT CORRECTLY RULED THAT THERE MUST BE A CONVICTION PRIOR TO PROCEEDING UNDER 77-7-1 AND 77-7-2.

The logical reading of 77-7-1 demonstrated that a conviction of (1) a felony, or (2) an indictable misdemeanor, or (3) a misdemeanor involving moral turpitude, or (4) of

malfeasance in office is necessary in order to remove persons from office. This requirement of a conviction can be shown by the legislative intent, the case law, the construction of the statute, and the alternatives available to a party attempting to remove a public official from office.

A long line of Utah cases states that the primary rule of statutory construction is to ascertain and carry into effect the intention of the legislature. Taft v. Glade, 201 P.2d 285 (Utah 1948); Rogers v. Wagstaff, 120 Utah 136, 232 P.2d 766 (1951). In Johnson v. State Tax Commission, 17 Utah 2d 337, 411 P.2d 831 (1966), the Utah Supreme Court stated:

> The fundamental consideration which transcends all others in regard to the interpretation and application of a statute is: What was the intent of the legislature? All other rules of statutory construction are subordinate to it and are helpful only insofar as they assist in attaining that objective. (Emphasis added.)

The history behind the enactment of the present 77-7-1 is helpful in determining the intent of the legislature. Prior to 1967, 77-7-1 read:

> All officers not liable to impeachment shall be subject to removal for high crimes, misdemeanors or malfeasance in office as in this chapter provided.

The word "conviction" did not appear anywhere in the statute; rather, the statute seemed to require misdoing "in office" for removal, leaving an official who committed crimes outside of office immune from removal. The Utah Supreme Court interpreted the statute in this manner in State v. Jones, 17 Utah 2d 190, 407 P.2d 571 (1965), resulting in a county auditor serving time in jail for failure to file an income tax return while holding on to his county position.

As a result of the Jones decision, Representative Frost of the Utah State Legislature sponsored an amendment to 77-7-1. On February 2, 1967, debate concerning House Bill 82 (amending 77-7-1) took place. (See attached exhibit.) The following excerpts from the debate clearly demonstrate that a conviction for any of the offenses listed in 77-7-1 is necessary in order to remove an official from office.

> REPRESENTATIVE FROST: . . . I would like to give you just a little bit of background on this bill. It came about through the incident here in Salt Lake County of Mr. Jones being convicted and being sent to prison while in office, and so I decided that probably there was something that needed to be done about the bill. . . . the law should be clarified and strengthened . . . that it was very definite and clear how he [a person who performed misconduct in office] could be removed from office.
>
> REPRESENTATIVE COX: Such accusation may be initiated by any

> taxpayer. Now I am wondering about that, does that mean that the bum that has bought a pack of cigarettes downtown and is arrested by the sheriff and taken to the jail because he was inebriated or was a vagrant, that he could come out of jail day after tomorrow and by making a sworn statement make that sheriff defend himself before the District Court, is that the meaning of this.
>
> REPRESENTATIVE FROST: . . . we did not make this harsh enough so that any little picky accusations like that they could commence accusation for removal. They have to be convicted of a felony to begin with. . . . one thing that we wanted to get away from . . . that some crank could not start procedures without any basis for this procedure. . . . this spells out very clearly that before anything definitely can be taken care of or proceedings be started that he would have to be . . . shown beyond any reasonable doubt that he was guilty of some of these crimes. (Emphasis added.)

The sponsor of the bill emphasized that conviction of a crime was a prerequisite to initiating action under 77-7-1.

The State wants 77-7-1 interpreted so that it would read: " . . . shall be subject to removal . . . upon malfeasance in office or upon being convicted of a felony, an indictable misdemeanor, or a misdemeanor involving moral turpitude." Not only is this construction illogical and a direct contradiction of the legislative intent, it also is contrary

to Utah case law. In Ringwood v. State, 8 Utah 2d 287, 333 P.2d 943 (1959), the Utah Supreme Court confronted the problem of interpreting a series of words in which the only connective is the word "or." The court ruled that the disjunctive "or" applies to the entire series of words, in that case interpreting "consent to a chemical test of . . . his breath, blood, urine or saliva" to mean "consent to a chemical test . . . of breath or blood or urine or saliva." Applying this ruling to the present case, the only logical construction of 77-7-1 is that it requires conviction of a felony, or an indictable misdemeanor, or a misdemeanor involving moral turpitude or malfeasance in office. Just as the word "consent" applied to each individual type of test in Ringwood, the word "convicted" applies individually to each type of offense in 77-7-1.

It might be argued that requiring a conviction for 77-7-1 limits taxpayer and grand jury rights under 77-7-2 and 77-7-4, which allow them to bring accusations against public officials. However, as can be ascertained from the excerpts of the debate on House Bill 82, the legislature wanted to control the manner in which taxpayers could attempt to oust public officials. It would be chaotic to allow taxpayers to bring removal proceedings without some form of check on their action, such as a requirement of a prior conviction. As the statute now reads, if a public official is convicted of one of

the listed offenses under 77-7-1, a taxpayer is allowed to initiate action for removal under 77-7-2. This is a check upon public enforcement agencies. Should they decide not to proceed against a convicted official for political or other reasons, the taxpayer and/or grand jury are not left without recourse.

Since a conviction is required under 77-7-1 to remove a public official, this creates two problems: (1) the term "malfeasance in office" is rendered inoperative since it is not codified, and one cannot be convicted of an uncodified crime, and (2) determining what recourse is available to remove a dishonest official in order to protect the public.

The argument that the term "malfeasance in office" is rendered invalid if a conviction is required is not controlling. Section 77-7-1 also lists as grounds for removal "an indictable misdemeanor," and under the present Utah Criminal Code "an indictable misdemeanor" does not exist. This merely illustrates that the Utah State Legislature did not take into consideration all facets of the existing law when the new criminal code was enacted in 1973. This alone is not enough to justify distortion of a statute so as to render all parts totally operable.

The new code does provide for an action that can be brought against public officials who are derelict in their duty. Utah Code Annotated § 76-8-201 provides:

> A public servant is guilty of a class B misdemeanor if with an intent to benefit himself or another or harm another, he knowingly commits an authorized act which purports to be an act of his office, or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.

Thus, the legislature has provided for an action with which a public official, if convicted, could fall within the removal section of 77-7-1, even if the term "malfeasance in office" is determined inoperative.

Respondent therefore submits that the following would be consistent with the legislative intent and statutory construction:

> 1. That conviction of one of the listed offenses is required to proceed for removal under 77-7-1.
>
> 2. That a taxpayer or grand jury can bring an action to remove an elected official under 77-7-1 as a check on prosecuting officials who fail to act if the official has been convicted of one of the listed offenses.
>
> 3. That other statutes, particularly 76-8-201, provide adequate guidelines to proceed against official misconduct, even if "malfeasance in office" is no longer an effective grounds for removal.

POINT III

THE TRIAL COURT CORRECTLY RULED THAT THE ACCUSATION FAILED TO STATE A CAUSE OF ACTION.

The accusation in the present case was brought against the respondent for "committing malfeasance in office, in that during his term as chief of police said defendant did intentionally and knowingly breach the trust imposed on him . . . ." The issues are: (1) is malfeasance in office a viable means of "accusing" a public official, and (2) even if it is, was the accusation sufficient to bring such a charge.

Since 77-7-1 requires a party to be "convicted" of the listed offenses in order to be removed from office, and there is no crime of "malfeasance" for which an official can be convicted, accusing a party of malfeasance is not a viable means for initiating removal from office. "Malfeasance in office" was characterized in the Geurts case as being "quasi-criminal," therefore, most standards for criminal proceedings were applied to charges of malfeasance in office at the time. Since then, 77-7-1 has been amended to require a conviction for removal of office, thus characterizing "malfeasance in office" as a crime. However, malfeasance in office is not codified, and in 1973, Utah Code Ann. § 76-1-105 was enacted, which states:

> Common law crimes are abolished and no conduct is a crime unless made so by this code, other applicable statute or ordinance. (Emphasis added.)

Therefore, under present statutory guidelines, an action for

malfeasance in office cannot be prosecuted. This does not leave the State without recourse against dishonest officials, as was demonstrated in Point II of this brief.

Even if malfeasance in office is held not to fall completely within criminal procedure guidelines, the accusation in this case fails for lack of sufficiency as shown in Burke v. Knox, 59 Utah 596, 206 P. 711 (1922). In Burke, a case in which a Utah official was accused under a statute identical to 77-7-1 before it was amended in 1967, the Utah Supreme Court stated:

> The pleader must state in ordinary and concise language the particular acts or things done by the accused which constitute the offense he is charged with having committed.

The court later stated:

> Until (the actual thing or act complained of . . . is fully set forth and pointed out in the accusation) the accusation must be held insufficient for want of facts . . . .

The court also stated that mere conclusions of law were not enough to maintain such an action; explicit facts detailing the accusation were required.

Forty years later, the Utah Supreme Court again confronted the specificity requirement of the term "malfeasance in office" in Geurts. Although the court held that the term was not so vague as to be unconstitutional, the court defined

"malfeasance in office" as:

> . . . (requiring) an intentional act or omission relating to the duties of a public office, which amounts to a crime, or which involves a substantial breach of trust imposed on the official by the nature of his office, and which conduct is of such character as to offend against the commonly accepted standard of honesty and morality.

In Geurts, the indictment stated with specificity the acts which constituted the offense of which the official was charged.

The result of the holdings in Burke and Geurts is that specific acts are necessary to proceed against an individual charged with malfeasance in office, and that these acts must be specified in the accusation. In the case at hand, the accusation fails to meet these standards.

The accusation against the respondent merely states that he has committed malfeasance in office, a legal conclusion, and that he "did intentionally and knowingly break the trust imposed on him by virtue of his office to a substantial degree and in such a way as to offend against the commonly accepted standards of a person in his office," a legal conclusion worded within the Geurts definition. However, Geurts does not state that the acts constituting the offense need not be specified. In Geurts the acts were specified and therefore not at issue.

Burke has not been overruled. The specificity requirements of that case still control. The accusation against the respondent does not specify the acts with which the respondent has been charged, therefore the decision of the trial court that the accusation fails for want of sufficiency should stand.

CONCLUSION

The trial court decision dismissing the accusation against respondent should be upheld for three reasons:

1. The State has no basis for appeal under Title 77, the title under which this action was brought.

2. As shown by the legislative intent and the construction of 77-7-1, a conviction is necessary prior to instigating a removal action under that section.

3. The accusation was insufficient to state a cause of action under the Burke-Geurts guidelines.

To hold otherwise would result in a direct repudiation of the legislative record, while at the same time creating a queasy quasi-criminal action that would allow a prosecuting official or taxpayer the complete advantages of criminal process without any of the criminal process restraints.

Respectfully submitted,

Phil L. Hansen
HANSEN AND HANSEN
250 East Broadway, Suite 100
Salt Lake City, Utah 84111
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Brief of Respondent were delivered to counsel for appellant, Robert B. Hansen, attorney general, and Robert R. Wallace, assistant attorney general, 236 State Capitol, Salt Lake City, Utah 84114, this 30 day of January, 1978.

Exhibit

HOUSE BILL NO. 82 REMOVAL FROM OFFICE - PUBLIC OFFICIAL
BY: Frost, et al.

TO AMEND SECTIONS CONCERNING REMOVAL OF PUBLIC OFFICERS TO PROVIDE SUCH REMOVAL UPON CONVICTION OF FELONY, INDICTABLE MISDEMEANOR OR ONE INVOLVING MORAL TURPITUDE; PROVIDE INITIATION THROUGH PRESENTATION OF SWORN ACCUSATION IN DISTRICT COURT BY ANY TAXPAYER . . . .

Read First Time & Introduced referred to Rules Committee	January 18, 1967	D-10	P-8
RULES COMMITTEE REPORT then referred to: POLITICAL SUBDIVISIONS	January 20, 1977	D-12	P-9
STANDING COMMITTEE REPORT	January 27, 1967	D-19	P-1

COPY: Dated January 27, 1977

Mr. Speaker:

Your Committee on Political Subdivisions, to which was referred H. B. No. 82, by Mr. Frost, et al., REMOVAL FROM OFFICE, has carefully considered said bill and reports the same out favorably.

ROSS H. PLANT, Chairman

Report filed.

READ SECOND TIME	January 27, 1967	D-19	P-1
Read Third Time	February 2, 1967	D-25	P-2
Committee Report Adopted	"	"	"
RETAINED POSITION ON 3RD READING	"	"	"
FURTHER CONSIDERATION HB #82:	February 3, 1967	D-26	P-2

H. B. No. 82 then passed on the following roll call:
AYES: 64 NAYS: 0 ABSENT: 5

VOTING IN THE AFFIRMATIVE WERE: Representatives Aagard, Anderson, G. T.; Anderson, R. C.; Arbuckle, Bagley, Bebunin, Benson, Bittner, Brady, Bronson, Brough, Buhler, Cannon, Carling, Christensen, Cox, Day, Dennis, Drake, Eskelsen, Fisher, Fowler, Frost, Gillman, Halladay, Halverson, Harding, Harward, Hill, Hodgkinson, Holt, Hunter, Inkley, Jack, Jones, Knowlton, Leatham, Lingard, Loveridge, Ludwig, Mather, Mecham, Mitchell, Obershasley, Peterson, Plant, Powell, Preece, Redd, Reese, Regis, Russell, Sanders, Savage, Smith, Stone, Sumsion, Thurston, Wheeler, Whiting, Wilkinson, Williams, Young, and Mr. Speaker

ABSENT AND NOT VOTING: Representatives Darger, Nelson, Nielson, Pace & Theurer. . . .

Transmitted to Senate for its action
February 3, 1967 D-26 P-2

February 2, 1967

EXHIBIT

HOUSE BILL No. 82. REMOVAL FROM OFFICE-PUBLIC OFFICIAL
BY: Frost, et al.

TO AMEND SECTIONS CONCERNING REMOVAL OF PUBLIC OFFICIALS TO PROVIDE SUCH REMOVAL UPON CONVICTION OF FELONY, INDICTABLE MISDEMEANOR OR ONE INVOLVING MORAL TURPITUDE: PROVIDE INITIATION THROUGH PRESENTATION OF SWORN ACCUSATION IN DISTRICT COURT BY ANY TAXPAYER.....

THIRD READING HOUSE BILL No. 82

TRANSCRIPT OF DEBATE

REPRESENTATIVE FROST:.... Mr. Speaker, and fellow representatives thank you for extending the courtesy of circulating this bill for me. I would like to give you just a little bit of background on this bill. It came about through the incident here in Salt Lake County of Mr. Jones being convicted and being sent to prison while in office, and so I decided that probably there was something that needed to be done about the bill. I read in the paper where the governor and other officials said that the law was not clear on cases like this and that it should be cleared up, so I asked, first before the session started, I asked Mr. Lewis Lloyd from the Legislative Council to research this a little bit, I didn't ask him to prepare a bill, but I asked his opinion on it and he says yes, he concurred that the law needed to be cleared up and strengthened. When the session started he did have a bill prepared for me on this, I didn't ask him to do this but he did have a bill prepared. I took this prepared bill down to the reference attorneys and asked them to check it over and see if there was any improvement they could make on this bill, and

they took this first version and worked it over and came up with another bill which they printed. Then I went down to the Attorney General's office with it, and I also asked that the reference attorneys if they thought that this law should be strengthened and cleared up and they said yes, very definitely. Then I went to the Attorney General's office and worked oh about a week in the Attorney General's office and they also printed another bill for me. They had the opinion also that there should be a strengthening in this field, the law should be clarified and strengthened. And they printed a bill for me also. Now this bill as we have it here before us is the bill as prepared by the Attorney General's office. I then went reverse on the route back to these reference attorneys and Mr. Lloyd and had them recheck the bill over and they said that as far as they was concerned it was a good bill, and they couldn't find any flaws in it. We looked mainly at the fact, and checked very thoroughly, we didn't want to make a bill that was so harsh that public officials would be harassed continually by cranks who would want to remove them from office, but we also wanted to come up with a bill that was fair and when a person had performed any misconduct in office where he would come under this law that it was very definite and clear how he could be removed from office. And this is the bill as it is before you now, and I think that's all I need to say about it, and thank you.

MR. SPEAKER: Are you ready for the question on House Bill 82? Representative Ludwig.

REPRESENTATIVE LUDWIG: I have a directed question to Representative Frost.

MR. SPEAKER: Representative Frost, will you submit to questions?

REPRESENTATIVE FROST: Yes.

REPRESENTATIVE LUDWIG: On the ...this covers, of course, clearly anything below the State level... would they be considered also...included the offices of the State in this?

REPRESENTATIVE FROST: Yes, the offices of the State are already covered under other sections of the Code. We discussed that quite thoroughly.

REPRESENTATIVE LUDWIG: By impeachment or actually by this process, there are two different things involved here.

REPRESENTATIVE FROST: Yes, uh, we went into that quite thoroughly, and I asked that from every one of these different agencies and they said yes that the State offices are already covered by this under this Code in a different section, and they are covered by it already.

REPRESENTATIVE LUDWIG: Well they are covered by impeachment proceedings brought only by certain people or are they covered by a citizen who would be required to the same as this act would do to minor political subdivisions?

REPRESENTATIVE FROST: I don't know about a citizen taking action against a State official, if they are covered that way. That didn't come up in our questions.

MR. SPEAKER: Representative Ludwig.

REPRESENTATIVE LUDWIG: This bill provides that such accusations may be initiated by any taxpayer. What I am asking is can he do the same on the State level or is it my impeach-

ment proceedings say restricted to say for some of the State offices, would it be by impeachment by way of the Legislature or something else so that it is very limited.

REPRESENTATIVE FROST: Well, uh, this act here would not apply to State officials. It states here City, County, or other political subdivisions of this State. As I understand it, it did not include the State officials.

REPRESENTATIVE LUDWIG: Right, I understand that, but my question was can State officials be reached in a like manner by the other means which you discussed, or might it be wise to consider placing them under this also?

REPRESENTATIVE FROST: I couldn't tell you. I was informed that... I did not research this phase of it, but we had quite a lot of discussion of this phase and I was informed that the Code was sufficient for State officials on this.

MR. SPEAKER: REPRESENTATIVE COX.

REPRESENTATIVE COX: Would the Representative Frost submit to a question?

MR. SPEAKER: Representative Frost will you submit to a question?

REPRESENTATIVE FROST: Yes.

REPRESENTATIVE COX: Such accusation may be initiated by any taxpayer. Now I am wondering about that, does that mean that the bum that has brought a pack of cigarettes downtown and is arrested by the sheriff and taken to the jail because he was inebriated or was a vagrant, that he could come out of jail day after tomorrow and by making a sworn statement make that sheriff defend himself before the District Court, is that the meaning of this.

REPRESENTATIVE FROST: Representative Cox, in one interpretation, yes. But you know what I said before, that we did not make this harsh enough so that any little picky accusations like that they could commence accusation for removal. They have to be convicted of a felony to begin with. These crimes are spelled out in the first paragraph very distinctly, and it is so worded that that is one thing that we wanted to get away from... that some crank could not start procedures without any basis for this procedure.

REPRESENTATIVE COX: I'll agree that if they are convicted it has to be of something serious, but is there anything to stop him from swearing to a statement and making him defend himself in Court. Not convict him, but just defend himself?

REPRESENTATIVE FROST. The statute, as it now is, there is nothing now to stop the person from starting action against any official, but this spells out very clearly that before anything definitely can be taken care of or proceedings be started, that he would have to be proven or it would have to be shown beyond any reasonable doubt that he was guilty of some of these crimes.